IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 557 of 1999

with

SPECIAL CRIMINAL APPLICATION No 488 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAGHUNATH KAMPABHAI SHETTY

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 557 of 1999
   MR MH BAREJIA for Petitioner
   MR RC KODEKAR, APP for Respondent

2. Special Criminal ApplicationNo 488 of 1998
   MR MH BAREJIA for Petitioner
   MR RC KODEKAR, APP for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/02/2000

ORAL JUDGEMENT

Heard learned counsel for the petitioners of these Special Criminal Applications, Mr.M.H.Barejia and learned APP for the respondent-State, Mr.R.C.Kodekar.

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#. An application submitted by the petitioner-original accused before the court below at Ex.10 in Sessions Case No.110 of 1996 on 20-3-1998 has been rejected by the court below on the ground that witness cannot be recalled as the petitioner-accused has not provided any details regarding the point on which he wanted to recall the witness. Against that order, petitioner-original accused preferred Special Criminal Application No.488 of 1998. During the pendency of said Special Criminal Application No.488 of 1998, petitioner-original accused has submitted another application Ex.87 in the said petition on 28-5-1999. After hearing the learned counsel appearing for the respective parties, same has been rejected by the learned Additional Sessions Judge on 14-6-1999 mainly on the ground that Special Criminal Application No.488 of 1998 is pending and, therefore, he has preferred Special Criminal Application No.557 of 1999.

#. I have heard learned counsel for the respective parties and have gone through the application Ex.10 and 87. According to petitioner, he has submitted a detailed application Ex.87 before the court below wherein he has specifically mentioned the points on which he wanted to recall the witness, but same have not been considered by the court for deciding the application on merits. Application has been decided on the ground that Special Criminal Application No.488 of 1998 is pending before the High Court and, therefore, same is required to be decided on merits by the learned Addl. Sessions Judge.

#. Under the circumstances, I quash and set aside the order dated 14-6-1999 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) upon application Ex.87. Consequently order dated 6-4-1998 passed the said Judge upon application Ex.10 is also quashed and set aside. Learned Judge is directed to decide the application Ex.87 on merits after hearing the learned counsel for the respective parties and inform this Court accordingly. Rule is made absolute in each of these Special Criminal Applications. Direct service is permitted.

#. Office is directed to keep original order in Special Criminal Application No.557 of 1999 and a copy of the same in Special Criminal Application No.488 of 1998.

(R.P.DHOLAKIA,J.)

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